UNITED STATES OF AMERICA BEFORE THE NATIONAL LABOR RELATIONS BOARD Washington, D.C.

VERITAS HEALTH SERVICES, INC. D/B/A CHINO VALLEY MEDICAL CENTER

and Case: 31-CA-091701

UNITED NURSES ASSOCIATION OF CALIFORNIA/UNION OF HEALTH CARE PROFESSIONALS NUHHCE, AFSCME, AFL-CIO

COUNSEL FOR THE ACTING GENERAL COUNSEL'S OPPOSITION TO RESPONDENT'S MOTION TO DISMISS COMPLAINT

Pursuant to Section 102.24 of the National Labor Relations Board's Rules and Regulations, Counsel for the Acting General Counsel hereby opposes Respondent's Motion to Dismiss filed with the Board on March 26, 2013.

In its motion, Respondent asks that the Board dismiss the complaint. Relying primarily on *Noel Canning v. NLRB*, __ F.3d __, Nos. 12-115, 12-1153, 2013 WL 276024 (D.C. Cir. Jan. 25, 2013), Respondent argues that the President's January 2012 recess appointments to the Board were invalid, and therefore that the Board, and Regional Director Mori Rubin, are not authorized to act on these proceedings.

The Board has publicly stated that it disagrees with the D.C. Circuit's *Noel Canning* decision, and, on March 12, 2013, the Board announced that it, in consultation with the Department of Justice, intends to file a petition for certiorari with the United States Supreme Court seeking review of the D. C. Circuit's decision. Furthermore, in *Belgrove Post Acute Care Center*, 359 NLRB No. 77, slip op. 1, fn.1 (Mar. 13, 2013), the Board took note that in *Noel Canning*, the D.C. Circuit Court itself recognized that its conclusions concerning the Presidential appointments had been rejected by the other circuit courts to address the

issues. Compare Noel Canning v. NLRB, Nos. 12-1115, 12-1153, 2013 WL 276024, at *14-15, 19 (D.C. Cir. Jan. 25, 2013) with Evans v. Stephens, 387 F.3d 1220, 1226 (11th Cir. 2004) (en banc); United States v. Woodley, 751 F.2d 1008, 1012-13 (9th Cir. 1985) (en banc); United States v. Allocco, 305 F.2d 704, 709-15 (2d Cir. 1962). Thus in Belgrove, the Board concluded that because the "question [of the validity of the recess appointments] remains in litigation," until such time as it is ultimately resolved, "the Board is charged to fulfill its responsibilities under the Act." The appointment of Regional Director Mori Rubin is also in accordance with the Board's judgment on these matters.

Based on the foregoing, Counsel for the Acting General Counsel respectfully requests that Respondent's Motion be denied.

Dated: April 3, 2013.

Respectfully submitted,

lőhn Rubin

Counsel for the Acting General Counsel National Labor Relations Board, Region 31 11500 W. Olympic Boulevard, Suite 600 Los Angeles, CA 90064

Re: VERITAS HEALTH SERVICES, INC. d/b/a CHINO VALLEY MEDICAL CENTER

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CERTIFICATE OF SERVICE

I hereby certify that I served the attached **COUNSEL FOR THE ACTING GENERAL COUNSEL'S OPPOSITION TO RESPONDENT'S MOTION TO DISMISS COMPLAINT** on the parties listed below on the 3rd day of April, 2013:

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